

STATE PERSONNEL BOARD CALENDAR



FEBRUARY 10, 2004

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: January 30, 2004

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD -- Appeals Division

SUBJECT: Notice and Agenda for the February 10, 2004, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on February 10, 2004, at the offices of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the February 10, 2004, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, CA 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Notice and Agenda
Page 2
January 30, 2004

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.

TAMARA LACEY
Secretariat's Office

Attachment

CALIFORNIA STATE PERSONNEL BOARD MEETING*
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING AGENDA**

February 10, 2004

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 9:00 - 9:30 1. ROLL CALL
2. REPORT OF THE EXECUTIVE OFFICER
- Report of Laura Aguilera
Interim Executive Officer
State Personnel Board
3. REPORT OF THE CHIEF COUNSEL
4. NEW BUSINESS
(Items may be raised by Board Members for
scheduling and discussion at future meet-
ings.)
5. REPORT ON LEGISLATION
- 9:30 - 10:00 6. Oral Argument

* Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

** The Agenda for the Board can be obtained at the following Internet address: <http://www.spb.ca.gov/calendar.htm>

Oral Argument in the matter **DORYANNA
ANDERSON-JOHNSON, CASE NO 00-1687A.** Appeal
from denial of reasonable accommodation.
California Rehabilitation Center - Norco

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 10:00 - 10:15 7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at
prior hearing. [Government Code Sections
11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 10:15 - 10:45 8. **ORAL ARGUMENT**
Oral Argument in the matter of **TIMOTHY
BOBITT, CASE NO.02-2856.** Appeal from
suspension. Department of Justice

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 10:45 - 11:00 9. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at
prior hearing. [Government Code Sections
11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 11:00 - 11:30 10. **ORAL ARGUMENT**
Oral Argument in the matter of **SAMUEL
BRYANT, CASE NO. 00-4238.** Appeal from
dismissal. Department of Youth Authority

Agenda - Page 3
February 10, 2004

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 11:30 - 11:45 11. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at
prior hearing. [Government Code Sections
11126(d), 18653.]
- 11:45 - 1:00 LUNCH

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 1:00 - 1:30 12. **ORAL ARGUMENT**
Oral Argument in the matter of **FRANK GARCIA,**
CASE NO. 03-1906. Appeal from dismissal.
Department of Transportation.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 1:30 - 1:45 13. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at
prior hearing. [Government Code Sections
11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 1:45 - 2:15 14. **ORAL ARGUMENT**
Oral Argument in the matter of **ROBERT GREER,**
CASE NO. 02-3624. Appeal from dismissal.
Department of Corrections.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 2:15 - 2:30 15. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at
prior hearing. [Government Code Sections
11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 2:30 - 3:00 16. **ORAL ARGUMENT**
Oral Argument in the matter of **THEODORE HUGHING, CASE NO.03-0354**. Appeal from Medical Termination. Department of Developmental Services.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 3:00 - 3:15 17. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing. [Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 3:15 - 3:45 18. **HEARING** - in the matter of **PSC NO'S 03-09 & 03-10**. Appeal of the California Department of Insurance from the Executive Officer's August 15, 2003, disapproval of contracts with Strumwasser & Woocher and Bartko, Zankel, Tarrant & Miller, for legal services in response to the review request filed by California Attorneys, Administrative Law Judges and Hearing Officers (CASE).

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 3:45 - 4:00 19. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing. [Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 4:00 - 4:30 20. **ALEJANDRO GARZA AND ROBIN CORRALEJO**
REPRESENTING THE JOINT LABOR MANAGEMENT COMMITTEE ON DISCRIMINATION TO FORMALLY PRESENT THE *REPORT TO THE CALIFORNIA STATE PERSONNEL BOARD, CIVIL SERVICE DIVISION,*

*CSEA/SEIU, LOCAL 1000, AND DEPARTMENT OF
PERSONNEL ADMINISTRATION, NOVEMBER 2003.*
CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 4:30 - 21. DELIBERATION ON ADVERSE ACTION, DISCRIMINATION COMPLAINT, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES
Deliberations on matter submitted at prior hearing, on proposed decisions, petitions for rehearing, rejected decisions, remanded decisions, submitted decisions, and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself.
[Government Code Sections 11126 (d), and 18653 (2).]
22. PENDING LITIGATION
Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code Sections 11126 (e) (1), 18653.]

State Personnel Board (SPB) v. Department of
Personnel Administration (DPA)/
International Union of Operating Engineers
(IUOE et al. Sacramento County Superior Court
Case No. 01CS00109

Association of California State Attorneys
and Administrative Law Judges v.
DPA/California Department of Forestry
Employees Association (ASKA) CDF
Firefighters Court of Appeal, Third district
No. C034943
Sacramento County Superior Court No.
99CS03314)

IUOE v. SPB/Public Employee Relations Board
(PERB)
Unfair Practice Case No. SA-CE-1295-S

Connerly v. SPB

SPB v. DPA/California State Employees
Association (Post and Promote)

23. RECOMMENDATIONS TO THE LEGISLATURE
Deliberations on recommendations to the
Legislature. [Government Code Section 18653.]
24. RECOMMENDATIONS TO THE GOVERNOR
Deliberations on recommendations to the
Governor. [Government Code Section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

On Adjournment:

25. DISCUSSION OF COMING BOARD MEETING SCHEDULE
OF FEBRUARY 25, 2004, IN SACRAMENTO, CALIFORNIA

BOARD ACTIONS

26. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY
MINUTES OF JANUARY 28, 2004
27. ACTION ON SUBMITTED ITEMS
(See Agenda Page 22)
These items have been taken under submission
by the State Personnel Board at a prior
meeting and may be before the Board for a
vote at this meeting. This list does not
include evidentiary cases, as those cases
are listed separately by category on this
agenda under Evidentiary Cases.
28. EVIDENTIARY CASES
The Board Administrative Law Judges conducts
Evidentiary hearings in appeals that include,
but are not limited to, adverse actions,
medical terminations, demotions,
discrimination, reasonable accommodations,
and whistleblower complaints.

A. BOARD CASES SUBMITTED

These cases have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting.

RICHARD COELHO, CASE NO. 02-1796R
Appeal from constructive medical termination
Fish and Game Warden
Department of Fish and Game

CYNTHIA GEORGE, CASE NOS. 02-4017 & 03-1058
Appeal from a two-week and a three week suspension
Administrative Law Judge
Unemployment Insurance Appeals Board

B. CASES PENDING

- Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

DORYANNA ANDERSON-JOHNSON, CASE NO. 00-1687A
Appeal from denial of reasonable accommodation
Correctional Lieutenant
California Rehabilitation Center - Norco
Department of Corrections

TIMOTHY BOBITT, CASE NO. 02-2856
Appeal from suspension
Senior Special Agent in Charge
Department of Justice at Sacramento

SAMUEL BRYANT, CASE NO. 00-4238
Appeal from dismissal
Youth Correctional Officer
Department of Youth Authority

FRANK GARCIA, CASE NO. 03-1906
Appeal from Dismissal
Caltrans Highway Maintenance
Worker
Department Transportation

ROBERT GREER, CASE NO. 02-3624
Appeal from dismissal
Medical Technical Assistant
Calipatria - State Prison
Department of Corrections

THEODORE HUGHING, CASE NO. 03-0354
Appeal from Medical Termination
Food Service Supervisor I
Department of Developmental Services

MAMIE JONES, CASE NO. 02-4441
Written argument only, neither
party will appear
Appeal from ten percent reduction
in salary for five months
Dispatcher Clerk
Department of Transportation - LA

C. CHIEF COUNSEL RESOLUTIONS

- Court Remands
These cases have been remanded to
the Board by the court for further
Board action.

NONE

- Stipulations
These stipulations have been
submitted to the Board for Board
approval, pursuant to Government
Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ)
PROPOSED DECISIONS

- Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time.

ARMANDO AGUIRRE CASE NO. 03-2376
Appeal from demotion
Correctional Sergeant
Ironwood State Prison - Blythe
Department of Corrections

BERTHA ARROYO, CASE NO. 03-2908
Appeal from dismissal
Correctional Officer
Corcoran State Prison - Corcoran
Department of Corrections

CALIFORNIA ASSOCIATION OF
PSYCHIATRIC TECHNICIANS (CAPT),
CASE NO. 02-3472E
Request for reconsideration and
appeal from the Executive Officer's
August 5, 2002 disapproval of seven
contracts
Psychiatric Technician services
Department of Corrections

GLEN CHARGUALAF, CASE NO. 03-2080
Appeal from dismissal
Correctional Officer
Valley State Prison - Soledad
Department of Corrections

ANDREW CIRNER, CASE NO. 03-2241E
Appeal from denial of request for
reasonable accommodation
Senior Psychiatric Technician
Department of Mental Health

ROSALINA CUBANGBANG, CASE NO. 03-
2692
Appeal from five-percent reduction
in salary for six qualifying pay
periods
Tax Technician III

Board of Equalization
MARTIN HERNANDEZ, CASE NO. 02-4449
Appeal from demotion
Correctional Sergeant
Calipatria State Prison -
Calipatria
Department of Corrections

JENNIFER KILL, CASE NO. 02-2164B
Appeal for determination of back
salary, benefits and interest
Supervising Cook
California Correctional Institution
- Tehachapi
Department of Corrections

SAUNDRA M. LOFTON, CASE NO. 03-3245
Appeal from suspension for
thirty-calendar-days
Food Service Supervisor I
Department of Developmental
Services

DENNIS MCFARLAND, CASE NO. 02-3718
Appeal from three-days suspension
Facilities Maintenance Mechanic
California State University - San
Marcos

KEVIN MCNEAL, CASE NO. 03-1274
Appeal from twenty-five-days
suspension
Correctional Officer
California State Prison - Lancaster
Department of Corrections

MARGARET A. MEJIA, CASE NO. 03-1848
Appeal from dismissal
Psychiatric Technician (Safety)
Department of Mental Health

JOE ORTEGA, CASE NO. 03-1225
Appeal from sixty-days suspension
Correctional Officer
California State Prison - Lancaster
Department of Corrections

VIRGINIA PARKER, CASE NO. 03-0325
Appeal from demotion
Correctional Lieutenant
Ironwood State Prison - Blythe
Department of Corrections

GARY TILLEY, CASE NO. 03-1263
Appeal from demotion
Caltrans Maintenance Supervisor
Department of Transportation

ANTHONY WATTS, CASE NO. 03-2402
Appeal from official reprimand
Correctional Officer
Pleasant Valley State Prison
Department of Corrections

CHRISTOPHER WINTERS, CASE NO. 03-
2662
Appeal from working-days suspension
Inspector of automotive equipment
California Highway Patrol

- Proposed Decisions Taken Under
Submission At Prior Meeting
These are ALJ proposed decisions
taken under submission at a prior
Board meeting, for lack of majority
vote or other reason.

NONE

- Proposed Decisions After Board
Remand

NONE

- Proposed Decisions After SPB
Arbitration

NONE

E. PETITIONS FOR REHEARING

DEBRA CANDLER - CASE NO. #03-2078P
Appeal from thirty-days suspension
Parole Agent I
Department of Corrections - LA
Petition for rehearing filed by
Respondent to be granted or denied

Xuguang Leng, CASE NO. 01-4006P
Appeal of Whistleblower Retaliation
Utilities Engineer
Public Utilities Commission
Petition for Rehearing filed by
Appellant to be granted or denied

GEORGE MRVICHIN, CASE NO. 02-4089P
Appeal of Whistleblower Retaliation
Athletic Trainer/Instructor
Los Angeles Community College
District
Petition for Rehearing filed by
Appellant to be granted or denied

- Whistleblower Notice of Findings
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

DORYANNA ANDERSON-JOHNSON, CASE NO.00-1687

Appeal from denial of reasonable accommodation
Correctional Lieutenant
California Rehabilitation Center - Norco
Department of Corrections

SAMUEL BRYANT, CASE NO. 00-4238

Appeal from dismissal
Youth Correctional Officer
Department of Youth Authority

ROSIE L. DASHIELL, CASE NO. 03-2279

Appeal from dismissal
Public Safety Dispatcher I
California Highway Patrol

RANDALL DODSON, Case No. 03-1587

Appeal from non-punitive termination
Caltrans Equipment Operator I
Department of Transportation

RAYMOND ERNANDEZ, CASE NO. 01-4251

Appeal from five-percent reduction in salary for six months
Correctional Officer
California Institution for Men - Chino
Department of Corrections

KEVIN FRAZIER, CASE NO. 03-0736

Appeal from a one-step reduction in salary for six months
Correctional Officer
California State Prison, San Quentin
Department of Corrections

FRANK GARCIA, CASE NO. 03-1906

Appeal from Dismissal
Caltrans Highway
Maintenance Worker
Department of Transportation

DONALD HERMANS, CASE NO. 03-0384
Appeal from dismissal
Correctional Officer
California State Prison - Lancaster
Department of Corrections

THEODORE HUGHING
Appeal from Medical
Termination/Demotion/Transfer
Food Service Supervisor I
Department of Developmental Services

MARY HUTTNER, CASE NO. 02-1690
Appeal from demotion
Staff Services Manager I to the
position of Associate Health Program
Advisor (top step)
Department of Health Services

CONNIE JOHNSON, CASE NO. 03-2620
Appeal from 30 calendar days suspension
Employment Program Representative
Employment Development Department

MAMIE JONES, CASE NO. 02-4441
Appeal from ten-percent reduction in
Salary for five months
Dispatcher Clerk
Department of Transportation

PAUL H. KEMP, Case No. 01-2841
Appeal from dismissal
Teacher Assistant - Youth Correctional
Reception Center and Clinic - Sacramento
Department of the Youth Authority

NEIL MADDEN, CASE NO. 03- 1682
Appeal from five percent reduction
in salary for three months
Correctional Officer
Centinela State Prison - Imperial
Department of Corrections at Imperial

DONNA MARTINEZ, CASE NO. 03-2232
Appeal from dismissal
Material & Stores Supervisor I
Central California Women's Facility,
Department of Corrections

CHRISTOPHER MIRAMONTES, CASE NO. 03-2299
Appeal from five-percent reduction in
salary for six months
Special Agent
Department of Corrections

NANCY SEARS, CASE NO. 02-2444
Appeal from two-step reduction in
salary for 12 months and transfer/
reassignment
Parole Agent I (Adult Parole)
Department of Corrections - Sacramento

ELANGO VAN SITTRAMBARAM, CASE NO. 03-2401
Appeal from suspension for six-months
Student Administration Technical
Programmer/Analyst
California State University - Long Beach

NANCY VALENTINO, Case No. 03-0699
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services

PHUONG VU, CASE NO. 03-1145
Appeal from dismissal
Transportation Engineer (Civil)
Department of Transportation

BOBBY WANG, CASE NO. 02-2684
Appeal from dismissal
Motor Vehicle Field Representative
Department of Motor Vehicles

BEVERLY WILSON, CASE NO. 03-1150R
Appeal from dismissal
Administrative Support Assistant II
California State University
Department of Transportation

29. RESOLUTION EXTENDING TIME UNDER GOVERNMENT
CODE SECTION 18671.1 EXTENSION
(See Agenda Page 25)

30. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

MARNIE BOWRING, CASE NO. 03-1044
Classification: Correctional Officer
Department of Corrections

SEBEN CANDLER, CASE NO. 03-0858
Classification: Correctional Officer
Department of Corrections

JAMES CHILDRESS, CASE NO. 03-1718
Classification: Correctional Officer
Department of Corrections

BRUCE CLEMENT, CASE NO. 03-0851
Classification: Correctional Officer
Department of Corrections

CHARLES COLLENBACK, CASE NO. 03-0859
Classification: Correctional Officer
Department of Corrections

BRYAN CROWELL, CASE NO. 03-0304
Classification: Correctional Officer
Department of Corrections

JOSE DIAZ, CASE NO. 03-0781
Classification: Correctional Officer
Department of Corrections

JULENE ELISARY, CASE NO. 03-0818
Classification: Correctional Officer
Department of Corrections

JILL GIOTTONINI, CASE NO. 03-1176
Classification: Correctional Officer
Department of Corrections

JERRY OSBORNE, CASE NO. 03-1092
Classification: Correctional Officer
Department of Corrections

ALFRED REAMS, CASE NO. 03-0998
Classification: Correctional Officer
Department of Corrections

LARRY SIEGLE, CASE NO. 03-1085
Classification: Correctional Officer
Department of Corrections

DAVID SOARES, CASE NO. 03-0927
Classification: Correctional Officer
Department of Corrections

SOLUS TERRY, CASE NO. 03-1086
Classification: Cadet, CHP
California Highway Patrol

B. MEDICAL AND PSYCHOLOGICAL SCREENING
APPEALS - NONE

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

C. EXAMINATION APPEALS - NONE
MINIMUM QUALIFICATIONS - NONE
MERIT ISSUE COMPLAINTS - NONE

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

D. RULE 212 OUT-OF-CLASS APPEALS - NONE
VOIDED APPOINTMENT APPEALS - NONE
RULE 211 APPEALS - NONE

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

- E. REQUEST TO FILE CHARGES CASES - NONE
PETITIONS FOR REHEARING CASES - NONE
Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.
- F. PSYCHOLOGICAL SCREENING CASES
Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

GABRIEL SILVA, CASE NO. 03-3640
Classification: Correctional Officer
Department of Corrections

31. NON-HEARING CALENDAR
The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code Section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure. Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative

will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

- A. TRANSPORTATION ENGINEERING
TECHNICIAN I AND TRANSPORTATION
ENGINEERING TECHNICIAN II
The California Department of
Transportation proposes to abolish the
Transportation Engineering Technician II
classification and to change the class
title of the Transportation Engineering
Technician I classification to
Transportation Engineering Technician.

32. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

33. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY
ACTIVITY
This section of the Agenda serves to inform
interested individuals and departments of
proposed and approved CEA position actions.

The first section lists position actions that
have been proposed and are currently under
consideration.

Any parties having concerns with the merits
of a proposed CEA position action should
submit their concerns in writing to the
Classification and Compensation Division of
the Department of Personnel Administration,
the Personnel Resources and Innovation
Division of the State Personnel Board, and
the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS
CURRENTLY UNDER CONSIDERATION

ASSISTANT DIRECTOR

The California State Library proposes to allocate the above position to the CEA category. The Assistant Director will serve as the manager of the California Cultural and Historical Endowment, charged with developing and administering grant programs and statewide policies.

DEPUTY DIRECTOR, EXHIBIT DEVELOPMENT

The California Science Center proposes to allocate the above position to the CEA category. The Deputy Director, Exhibit Development is responsible for establishing policy relating to the education and scientific content of all exhibit development.

LEGISLATIVE DIRECTOR

The Department of Insurance proposes to allocate the above position to the CEA category. The Legislative Director provides policy advise and direction to the Insurance Commissioner, Chief Deputy Commissioner, Assistant Chief Deputy Commissioner and Executive Staff on a wide variety of issues related to the Department's legislative program.

B. EXECUTIVE OFFICER DECISIONS REGARDING
REQUESTS TO ESTABLISH NEW CEA POSITIONS

DEPUTY DIRECTOR, OFFICE OF PROBLEM
GAMBLING

The Department of Alcohol and Drug Programs has withdrawn their request to establish the above position to the CEA category effective January 12, 2004.

MEDICAL DIRECTOR, COALINGA STATE
HOSPITAL

The Department of Mental Health has withdrawn their request to establish the above position to the CEA category effective January 15, 2004.

34. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE PRESENTED

35. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
2. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
3. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).
4. PSC NO. 03-04
Appeal of the California Department of Education and McGeorge School of Law from the Executive Officer's April 30, 2003, disapproval of a contract for special education mediation conferences and due process hearings. (Hearing held October 7, 2003).

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

**CALIFORNIA STATE PERSONNEL BOARD**

GRAY DAVIS, Governor

801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

Cal. 2/10/04

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

There is no written legislative report at this time. I will give a verbal presentation on any legislative action that has taken place that will be of interest to the Board.

Please contact me directly should you have any questions or comments regarding any bills in which you may have an interest. I can be reached at (916) 653-0453.

A handwritten signature in cursive script that reads 'Sherry Hicks'.

Sherry Hicks
Director of Legislation



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

MEMORANDUM

Date: December 19, 2003
 To: Members of the State Personnel Board
 From: Karen J. Brandt, Senior Staff Counsel *KJB*
 State Personnel Board
 Reviewed: Elise S. Rose, Chief Counsel
 State Personnel Board
 Subject: PSC Nos. 03-09 and 03-10: Appeal of the California Department of Insurance from the Executive Officer's August 15, 2003 Disapproval of Contracts with Strumwasser & Woocher and Bartko, Zankel, Tarrant & Miller for Legal Services in response to the review request filed by the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

REASON FOR HEARING

The California Department of Insurance (CDI) has appealed to the State Personnel Board (SPB or Board) from the Executive Officer's August 15, 2003 decision disapproving contracts (Contracts) for legal services CDI entered into with Strumwasser & Woocher (SW) and Bartko, Zankel, Tarrant & Miller (BZTM) (collectively, the Contractors). The Executive Officer reviewed the Contracts at the request of the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE). (A copy of the Executive Officer's decision is attached hereto as Attachment 1.)

BACKGROUND

CDI retained the Contractors to provide legal services in two Proposition 103 rollback cases.¹

SW provided legal representation to CDI in the rollback proceedings involving Century National Insurance Company (Century National). The hearing before the Administrative Law Judge in that case began on February 26, 1996. On October 8, 1998, the Insurance Commissioner issued an order adopting the ALJ's proposed decision in part and rejecting it in part. The amount of the rollback required by the decision was \$21,572,137 plus interest. Century National challenged the Commissioner's order in court. The court remanded the matter to CDI for further hearing on two issues. CDI staff represented CDI during the remand hearing before the ALJ on September 16, 2003. Post-hearing briefing is currently underway.

BZTM provided legal representation to CDI in the rollback proceedings involving Sierra Pacific Insurance Company (Sierra Pacific). The matter was tried before an Administrative Law Judge between February 16 – April 26, 1996. On September 25, 1996, the Insurance Commissioner adopted the ALJ's proposed decision, which ordered Sierra Pacific to rollback its rates by \$963,568. Sierra Pacific challenged that decision in court. The court remanded the matter to CDI for further hearing. The parties have recently settled this matter.

PROCEDURAL HISTORY

By letters dated March 28, 2003, CASE asked SPB to review the Contracts for compliance with Government Code § 19130.

CDI submitted responses to CASE's review requests and CASE submitted replies to CDI's responses. In addition, CDI responded to specific questions SPB staff raised with respect to the Contracts, and CASE replied to CDI's responses.² SPB's files with respect to CASE's review requests were consolidated for decision.

The Executive Officer issued his decision disapproving the Contracts on August 15, 2003. (Attachment 1)

¹ Proposition 103, an initiative approved by the California voters on November 8, 1988, among other things, mandated a one-time rollback of property-casualty insurance rates for policies written between November 8, 1988 and November 8, 1989 to 20% below the level prevailing on November 8, 1987. Insurers challenged in court the constitutionality of both Proposition 103 and the regulations adopted by the Insurance Commissioner to implement Proposition 103.

² Copies of CASE's review requests, CDI's responses and CASE's replies are not included in this Board item, but will be available for review at the Board meeting.

APPEAL BRIEFS

On September 8, 2003, CDI appealed to the Board from the Executive Officer's decision.

CDI filed its opening brief dated October 22, 2003. (Attachment 2)³

CASE filed its response dated November 19, 2003. (Attachment 3)

CDI filed its reply dated November 25, 2003. (Attachment 4)

ISSUE

This matter presents the following issue for the Board's review:

Are the Contracts authorized under Government Code § 19130(b)(3)?

SUMMARY OF POSITIONS

The parties' full arguments on these issues are contained in the Attachments and the Board's file. Set forth below is a summary of their arguments.

Government Code § 19130(b)(3)

Government Code § 19130(b)(3) authorizes a state agency to enter into a personal services contract with a private contractor when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

CDI's Position

CDI asserts that, given the legal challenges to Proposition 103 and CDI's implementing regulations, more than 6 years passed before the Commissioner could proceed with rollback hearings. In light of this significant delay, the Commissioner desired a quick resolution of the outstanding rollback cases. Given CDI's limited staff resources that could be devoted to prosecuting the complex and technical rollback cases (which

³ CDI attached four (4) exhibits to its opening brief. Those exhibits are not included in this Board item, but will be available for review at the Board meeting.

involved complicated actuarial, economic and constitutional issues), CDI sought outside assistance. The Attorney General waived representation, in part because of the one-time and complex nature of the rollback cases. Accordingly, CDI retained outside counsel to provide representation in the outstanding rollback cases.

If Century National seeks judicial review of the remand decision that the Commissioner may adopt, CDI does not have any civil service counsel who have the requisite knowledge of the complex actuarial, economic and legal issues to represent the Commissioner. The Board should follow its decision in PSC No. 03-01 and find that, because private counsel has represented CDI in the Century National case for eight years, with only minimal involvement of CDI staff counsel, and because the case involves highly technical and complicated actuarial, economic and constitutional issues, the experience necessary to adequately represent CDI does not currently exist in the civil service.

CASE's Position

CASE asserts that CDI has not presented sufficient information to substantiate that the contracted services are so highly specialized or of such a technical nature that the necessary expert knowledge, experience and ability are not available through the civil service. The "evidence" presented by CDI consists of just a two sentence legal conclusion. Nowhere in its brief, does CDI explain what its means by "limited resources" or what was so "complex" and "technical" about the cases that civil service attorneys could not perform the work. Because CDI has not indicated otherwise, CASE assumes that professional actuaries and/or economists were retained to present the evidence on these issues. There is no explanation as to why civil service attorneys could not retain these same experts and present the same evidence. Additionally, CDI does not explain what "constitutional" issues were so difficult that civil service attorneys could not handle those matters. Although CDI has had ample time to demonstrate what complicated actuarial, economic and constitutional issues were presented that could not have been handled by civil service attorneys, it has not done so.

The Board has consistently held that lack of manpower (limited resources) is not a sufficient basis for contracting out civil service work. Certainly, CDI had the financial resources to obtain civil service attorneys because it retained two law firms to perform the work at close to \$3,000,000.00.

Executive Officer's Decision

With respect to Government Code § 19130(b)(3), the Executive Officer's decision states:

In its May 5, 2003 submissions, CDI stated that, since 1995, the Office of the Attorney General (OAG), pursuant to Government Code § 11040, has

granted CDI consent to enter into the Contracts. In its April 20, 2001 consent letter, the OAG authorized CDI to employ counsel other than the OAG for:

the limited purposes of representing [CDI] (1) at administrative Proposition 103 rate rollback hearings, (2) in interim court review of interlocutory orders arising from such administrative hearings, and (3) in judicial proceedings under Code of Civil Procedure section 1094.5 brought to review final administrative Proposition 103 rate rollback determinations.

The OAG letter also stated that OAG "assumed that [CDI] has obtained any other state approvals or clearances that may be necessary."

In response to SPB's request for additional information, CDI submitted a letter dated July 18, 2003. The letter states that, beginning in 1989, shortly after Proposition 103 was adopted by the voters, numerous evidentiary rollback actions were filed. Many of these actions did not proceed immediately to hearing because of extensive litigation by the insurers. Then, over a two-month period in 1995, after the challenges to Proposition 103 had been resolved by the courts, 33 evidentiary rollback hearings were scheduled to commence. Because CDI did not then have the personnel resources to prosecute that many cases at one time, the OAG granted CDI's request to hire outside counsel to handle those hearings.

CDI's letter indicates that the Contracts were originally entered into in or about 1995 with respect to two of these evidentiary rollback matters - Century National and Sierra Pacific. According to CDI, the Commissioner of Insurance issued his decision in Sierra Pacific in September 1996 and in Century National in the fall of 1998. In both cases, the insurers filed writs of mandate in Superior Court, and in both cases the Superior Court remanded the matters to CDI to take additional evidence. Century National was remanded in April 2002 and Sierra Pacific in July 2002.

While it is not completely clear from CDI's July 18, 2003 letter, it appears that the SW Contract is for legal services with respect to Century National and that the BZTM Contract is for legal services with respect to Sierra Pacific. According to CDI, SW is no longer providing legal services at the administrative level in Century National, but may be asked to provide services again if the matter is ever appealed to the Superior Court. Although it is not specifically stated in CDI's letter, it appears that BZTM is providing legal services for the administrative proceedings in Sierra Pacific.

The OAG's consent for the Contracts under Government Code § 11040 is not sufficient to justify the Contracts under Government Code § 19130(b)(3). In order to justify the Contracts under Government Code § 19130(b)(3), CDI must submit sufficient information to show that the contracted services: (1) are not available within civil service; (2) cannot be performed satisfactorily by civil service employees; or (3) are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

The information that CDI has submitted is not sufficient to show that the Contracts meet any of these three conditions. First, while CDI's July 18, 2003 letter indicates that, in 1995, when the 33 rollback hearings were scheduled to commence, CDI may not have had sufficient staff counsel then employed to handle all those matters, CDI did not submit any information to show that in 2002, when the Contracts were amended, it still did not have adequate staffing resources to provide legal representation in either Sierra Pacific or Century National. In any event, it appears that its own counsel is now handling the Century National administrative proceedings. CDI has not submitted any information to indicate that its staff counsel, or attorneys within the OAG, would not be able to represent CDI in the administrative proceedings in Sierra Pacific as adequately and competently.

In addition, and regardless of CDI's suggestion in its letter of May 5, 2003, that the legal issues in these cases are complex, CDI has not submitted any specific information to substantiate that the contracted services are so highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. CDI has, therefore, failed to show that the Contracts are justified under Government Code § 19130(b)(3).

Because CDI has not submitted sufficient information to show that the Contracts are authorized under Government Code § 19130(b)(3), I am disapproving the Contracts.

ATTACHMENT INDEX

	<u>PAGE</u>
<u>Attachment 1</u> August 15, 2003 Executive Officer's decision	9
<u>Attachment 2</u> October 22 , 2003 CDI's written argument	13
<u>Attachment 3</u> November 19, 2003 CASE's response	25
<u>Attachment 4</u> November 25, 2003 CDI's reply	30

ATTACHMENT 1

**MEMORANDUM**

DATE: August 15, 2003

TO: Darrel "H" Woo
Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

FROM: State Personnel Board
Executive Office

SUBJECT: CASE'S REQUEST FOR REVIEW OF CA DEPARTMENT OF INSURANCE'S
CONTRACTS WITH STRUMWASSER & WOOCHER AND BARTKO, ZANKEL,
TARRANT & MILLER [SPB NOS. 03-003(b) and 03-004(b)]

By letters dated March 28, 2003, pursuant to Government Code § 19132 and SPB Rule 547.59 et seq., the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) asked the State Personnel Board (SPB) to review for compliance with Government Code § 19130(b) contracts (Contracts) that the California Department of Insurance (CDI) entered into with Strumwasser & Woocher LLP (SW) and Bartko, Zankel, Tarrant & Miller, a Professional Corporation, (BZTM) (collectively, the Contractors). The August 2002 amendment to the SW Contract indicates that its term is from June 21, 2000, through June 30, 2003, and its maximum amount is \$1,843,000.00. The August 2002 amendment to the BZTM Contract indicates that its term is also from June 21, 2000, through June 30, 2003, and that its maximum amount is \$904,000.00. These two Contract cases have been consolidated for decision.

CDI asserts that the Contracts are authorized under Government Code § 19130(b)(3). As set forth below, I find that CDI has not submitted sufficient information to show that the Contracts are justified under Government Code § 19130(b)(3). I am, therefore, disapproving the Contracts.

Government Code § 19130(b)(3) authorizes a State agency to enter into a personal services contract when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

In its submissions of May 5, 2003, CDI stated that, since 1995, the Office of the Attorney General (OAG), pursuant to Government Code § 11040, has granted CDI consent to enter into the Contracts. In its consent letter of April 20, 2001, the OAG authorized CDI to employ counsel other than the OAG for:

CASE's Request for Review of Contract
 of CA Dept of Insurance's Contracts
 [SPB Nos. 03-003(b) and 03-004(b)]
 August 15, 2003
 Page Two

... the limited purposes of representing [CDI] (1) at administrative Proposition 103 rate rollback hearings, (2) in interim court review of interlocutory orders arising from such administrative hearings, and (3) in judicial proceedings under Code of Civil Procedure section 1094.5 brought to review final administrative Proposition 103 rate rollback determinations.

The OAG letter also stated that OAG "assumed that [CDI] has obtained any other state approvals or clearances that may be necessary."

In response to SPB's request for additional information, CDI submitted a letter dated July 18, 2003. The letter states that, beginning in 1989, shortly after Proposition 103 was adopted by the voters, numerous evidentiary rollback actions were filed. Many of these actions did not proceed immediately to hearing because of extensive litigation by the insurers. Then, over a two-month period in 1995, after the challenges to Proposition 103 had been resolved by the courts, 33 evidentiary rollback hearings were scheduled to commence. Because CDI did not then have the personnel resources to prosecute that many cases at one time, the OAG granted CDI's request to hire outside counsel to handle those hearings.

CDI's letter indicates that the Contracts were originally entered into in or about 1995 with respect to two of these evidentiary rollback matters - Century National and Sierra Pacific. According to CDI, the Commissioner of Insurance issued his decision in Sierra Pacific in September 1996 and in Century National in the fall of 1998. In both cases, the insurers filed writs of mandate in Superior Court, and in both cases the Superior Court remanded the matters to CDI to take additional evidence. Century National was remanded in April 2002 and Sierra Pacific in July 2002.

While it is not completely clear from CDI's letter of July 18, 2003, it appears that the SW Contract is for legal services with respect to Century National and that the BZTM Contract is for legal services with respect to Sierra Pacific. According to CDI, SW is no longer providing legal services at the administrative level in Century National, but may be asked to provide services again if the matter is ever appealed to the Superior Court. Although it is not specifically stated in CDI's letter, it appears that BZTM is providing legal services for the administrative proceedings in Sierra Pacific.

The OAG's consent for the Contracts under Government Code § 11040 is not sufficient to justify the Contracts under Government Code § 19130(b)(3). In order to justify the Contracts under Government Code § 19130(b)(3), CDI must submit sufficient information to show that the contracted services: (1) are not available within civil service; (2) cannot be performed satisfactorily by civil service employees; or (3) are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

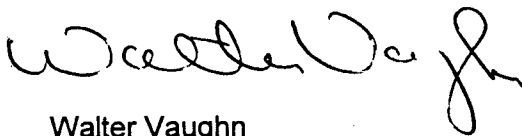
CASE's Request for Review of Contract
of CA Dept of Insurance's Contracts
[SPB Nos. 03-003(b) and 03-004(b)]
August 15, 2003
Page Three

The information that CDI has submitted is not sufficient to show that the Contracts meet any of these three conditions. First, while CDI's letter of July 18, 2003, indicates that, in 1995, when the 33 rollback hearings were scheduled to commence, CDI may not have had sufficient staff counsel then employed to handle all those matters, CDI did not submit any information to show that in 2002, when the Contracts were amended, it still did not have adequate staffing resources to provide legal representation in either Sierra Pacific or Century National. In any event, it appears that CDI's own counsel is now handling the Century National administrative proceedings. CDI has not submitted any information to indicate that its staff counsel, or attorneys within the OAG, would not be able to represent CDI in the administrative proceedings in Sierra Pacific as adequately and competently.

In addition and regardless of CDI's suggestion in its letter of May 5, 2003, that the legal issues in these cases are complex, CDI has not submitted any specific information to substantiate that the contracted services are so highly specialized or of such a technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. CDI has, therefore, failed to show that the Contracts are justified under Government Code § 19130(b)(3).

Because CDI has not submitted sufficient information to show that the Contracts are authorized under Government Code § 19130(b)(3), I am disapproving the Contracts.

This letter constitutes my decision to disapprove the Contracts. Any party has the right to appeal this decision to the five-member State Personnel Board pursuant to SPB Rule 547.66. Any appeal should be filed no later than 30 days following receipt of this letter to be considered by the Board.



Walter Vaughn
Executive Officer

cc: Steven B. Bassoff, Esq.
2000 "O" Street, Suite 250
Sacramento, CA 95814

ATTACHMENT 2

California Department of Insurance
 Legal Division, Rate Enforcement Bureau
 Elizabeth Mohr
 45 Fremont Street, 21st Floor
 San Francisco, CA 94105
 (415) 538-4112

Attorneys for the California Department of Insurance

**BEFORE THE STATE PERSONNEL BOARD
 OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

**California Department
 of Insurance**

from the Executive Officer's June 13, 2003,
 Disapproval of Contracts for Legal Services
 between the California Department of Insurance
 and the law firms of Strumwasser and Woocher
 and Bartko, Zankel, Tarrant & Miller.

)
)
) File Nos. PSC 03-09
) PSC 03-10
)

) DEPARTMENT OF INSURANCE
) OPENING BRIEF
)
)
)
)
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In response to the September 23, 2003, letter from the California State Personnel Board, the California Department of Insurance ("CDI") hereby submits this opening brief in connection with the above-referenced contracts for legal services. To provide context for these two contracts, which involve two Proposition 103 rollback cases, CDI first provides the following general background information regarding Proposition 103 and its implementation.

PROPOSITION 103 IMPLEMENTATION

A brief history of the implementation of the Proposition 103 rollback provisions provides perspective in connection with these two contracts. Additionally, it addresses CASE's July 25, 2003, request for an explanation as to "what attorneys were involved with the cases from 1989 to

1995, when hearings were scheduled, or why these attorneys were not able to handle the evidentiary hearings.” CASE asserts without substantiation that “it is difficult to believe that the cases simply ‘sat around’ for six years and civil service attorneys performed no work on them prior to the hearings.”¹ CASE further asserts that “there is no explanation given as to why civil service attorneys who were handling these cases prior to the scheduled hearings did not have the skill and experience to handle these matters.” However, as a result of the extensive legal challenges² to every step taken in the implementation of Proposition 103, no significant action could be taken on any insurer’s rollback applications until the Commissioner’s regulations implementing Proposition 103’s rollback provisions were upheld by the California Supreme Court in 1994 and the United States Supreme Court declined to consider the case in 1995.

Unfortunately, as a result of the legal challenges, the Department was unable to take action on individual company rollback applications until the regulations were upheld by the Supreme Court. See, generally, *Fireman’s Fund Ins. Co. v. Garamendi*, 790 F.Supp. 938 (N.D. Cal. 1992) for a description of the implementation process. And, despite CASE’s assertion that

¹ The Department was represented by the outside law firm of Strumwasser and Woocher in most of the Proposition 103 implementation matters.

² The United States District court summarized some of the legal challenges as follows in 1992: “Insurers doing business in California certainly have a right to challenge any unconstitutional aspects of the rate making process which have been forced on them by the initiative. But the multiple and overlapping assertions of these challenges in state court, before the Commissioner, and in this court causes this court to question those tactics. Numerous insurers are involved in these multiple challenges, some represented by the same law firms. Some challenges are filed in state court and some are filed in federal. The challenges are at the same time identical, separate and overlapping. Some of that appears to be coordinated and calculated (for example, the filing of the two complaints in these actions minutes apart). And most of the significant issues in these two cases are already pending in state court. The net result is to bring this court into an already complex and protracted process of litigation. Is that forum-shopping, or deliberate complexity, or merely the difficulty of the issues?” *Fireman’s Fund Ins. Co. v. Garamendi*, 790 F.Supp. 938, 964 (N.D. Cal. 1992).

civil service attorneys had been handling these cases, that was not the situation. CASE notes that there is no explanation given as to why civil service attorneys could not present evidence through expert witnesses on economic and actuarial matters. Had civil service attorneys originally been assigned to represent the Department in these cases, those attorneys could have presented the necessary evidence. However, after a matter has been extensively litigated by outside counsel for more than five years, the requisite detailed knowledge and experience necessary to provide representation in these specific cases does not exist in civil service.

Proposition 103, an initiative approved by the California voters on November 8, 1988, among other things, mandated a one-time rollback of property-casualty insurance rates for policies written between November 8, 1988, and November 8, 1989, to 20% below the level prevailing on November 8, 1987. An insurer was not required to roll back unless the Commissioner found, after a hearing, that an insurer was substantially threatened with insolvency. (See Insurance Code Section 1861.01(b).) The day after the election, seven insurers and an insurer trade association filed petitions with the California Supreme Court challenging the constitutionality of the initiative and seeking an immediate stay. In *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805, the California Supreme Court found the insolvency exception to be an unconstitutional confiscatory standard but upheld the remainder of the rollback provisions as constitutional. Insurers could be required to roll back rates as specified in the initiative if insurers were given the opportunity to earn a fair return on their investment. Accordingly, insurers were entitled to apply for a partial or complete exemption from the rollback requirement on the basis of a showing that the exemption was required to maintain their rates above the level of constitutional confiscation.

In June 1989, pursuant to the authority granted them in *Calfarm*, 460 insurers filed 4,089 applications for exemption from the rollback obligation.

Between May 1989 and the end of 1990, Commissioner Gillespie conducted hearings and adopted regulations to implement Proposition 103's rollback provisions. Like Proposition 103 itself, those regulations were immediately challenged in court.

On January 8, 1991, Commissioner Garamendi promulgated new proposed regulations, superseding the regulations adopted by the prior Commissioner. The proposed regulations were the subject of extensive hearings and were revised numerous times in response to public comment. The Commissioner adopted the regulations as emergency regulations in August 1991. Following a series of disapprovals of the regulations by the Office of Administrative Law and appeals to the Governor, the Governor ordered the Office of Administrative Law to approve the regulations on February 14, 1992, to allow for the inevitable judicial review.

Once the regulations were in place, the Commissioner began the process of company-specific rollback hearings pursuant to the provisions of the regulations. 20th Century Insurance Company, the first insurer to receive a rollback order from the Commissioner following an administrative hearing, challenged the decision in Los Angeles Superior Court. Because the court enjoined the Commissioner from enforcing the regulations, further administrative hearings could not be held. On August 18, 1994, the California Supreme Court issued its decision in *20th Century Insurance Company v. Garamendi* (1994) 8 Cal.4th 216 upholding the regulations. However, in upholding the regulations, the Supreme Court also recognized "a separate and independent constitutionally mandated "variance" which ... would be available to the individual insurer on proof of confiscation, that is to say, on proof that the regulations in question would otherwise be confiscatory as applied." *20th Century, supra*, at 314. (The recognition of a separate

and independent constitutional variance added additional complexity to the cases because, in addition to the variances set forth in the regulations, most insurers sought to prove an entitlement to the constitutional variance.) On February 14, 1995, the petition for a writ of certiorari to the United States Supreme Court as to 20th Century Insurance Company and 21st Century Casualty Company was dismissed.

Consequently, more than six years after passage of Proposition 103, the Commissioner was finally in a position to proceed to hearing for those insurers with outstanding rollback obligations. However, as each day passed, more and more California insureds changed insurance companies, moved out of state, or died awaiting their rollback refund checks. The urgency of the need to complete the rollback process was underscored by the need to contact those entitled to a refund after such a great deal of time had passed to ensure that they were not prevented from receiving their rollback refunds because of the delay.

When the United States Supreme Court declined to hear the *20th Century* case, more than 150 rollback matters remained outstanding. Although settlements were reached with many insurers, by the fall of 1995 approximately 60 insurers still had rollback obligations pending and it was obvious that hearings would be required before those matters were likely to be resolved.

Because seven years had passed since voter approval of Proposition 103, the Commissioner desired quick resolution of the outstanding rollback cases. However, given the Department's limited staff resources which could be devoted to prosecuting the complex and technical rollback cases (which involved complicated actuarial, economic and constitutional issues), the Department sought outside assistance. The Attorney General waived representation, in part because of the one-time and complex nature of the rollback cases. Accordingly, the Department retained outside counsel to provide representation for the outstanding rollback cases.

The law firm of Strumwasser and Woocher represented the Department in the Century National Insurance Company rollback matter. The law firm of Bartko, Zankel, Tarrant & Miller represented the Department in the matter of the rollback obligation of Sierra Pacific Insurance Company.

CENTURY NATIONAL INSURANCE COMPANY ROLLBACK PROCEEDING

Following preliminary discovery, motions, and related matters, the Century National Insurance Company rollback proceeding commenced before Administrative Law Judge Jon F. White on February 26, 1996. Disputed issues during the hearing included the amount of loss adjustment expenses to be categorized as allocated loss adjustment expenses and as unallocated loss adjustment expenses, issues related to excluded expenses, to various affiliate transactions, including reinsurance transactions, to the efficiency standard, the solvency variance and the constitutional variance. A copy of the Department's 104-page opening brief submitted at the administrative hearing is attached hereto as Exhibit "A" and incorporated herein by this reference to summarize the issues involved in this matter from the Department's perspective. A copy of the subsequent reply brief, and Century National Insurance Company's briefs, are not included but will be made available upon request. Attached hereto as Exhibit "B" and incorporated herein by this reference is the 51-page proposed decision of the Administrative Law Judge dated May 7, 1997. The Commissioner's October 8, 1988, Order Adopting Proposed Decision in Part and Rejecting Proposed Decision in Part is included in Exhibit "B". The dollar amount of the rollback required by the Administrative Decision was \$21,572,137 before interest. With interest, the rollback amount is now over \$50 million.

Century National Insurance Company challenged the Commissioner's order in San Francisco Superior Court. On May 19, 2000, the court denied Century National relief on its

second cause of action. On December 18, 2000, the court ruled in favor of Century National on its first cause of action. However, despite repeated requests, it was not until April 5, 2002, that the superior court judge issued an order remanding the matter to the Commissioner for further proceedings on two issues. A status conference took place before a Department of Insurance Administrative Law Judge on October 16, 2002. An evidentiary hearing took place before the Administrative Law Judge on September 16, 2003, and briefing is currently underway.

Department staff counsel were able to provide representation during the administrative remand hearing in part because of the limited nature of the issues on remand. Additionally, counsel representing the Commissioner could no longer represent the Department at the remand hearing. However, if Century National seeks further judicial review following issuance of the Commissioner's order (as anticipated), the issues to be considered will involve all of the actuarial, economic, and legal issues which have been the subject of this case since its inception. There are currently no civil service employees with the requisite knowledge of this particular case to represent the Commissioner in further judicial proceedings.

SIERRA PACIFIC INSURANCE COMPANY ROLLBACK PROCEEDING

The Sierra Pacific Insurance Company rollback matter was heard before Administrative Law Judge Arne Greenberg in San Francisco during sixteen non-consecutive hearing days between February 16, and April 26, 1996. Opening post-hearing briefs were filed by the parties on June 17, 1996, and reply briefs were filed on July 2, 1996. The matter was submitted for decision on that date. A copy of the Department's opening post-hearing brief, summarizing the issues raised in the hearing, is attached hereto as Exhibit "C" and incorporated herein by this reference.

After review of the prefiled direct and supplemental testimony of nine witnesses, the direct oral testimony of an additional witness (Thomas Inman of the Department of Insurance who was subpoenaed by Sierra Pacific as an adverse witness) and over 58 exhibits and 6 subexhibits, Sierra Pacific Insurance Company was ordered to roll back the rates that it charged from November 8, 1988, through November 7, 1989, by 13.6029%, or \$963,568, plus simple interest computed from May 8, 1989, up to and including the date of payment.

A copy of the Commissioner's September 25, 1996, decision is attached as Exhibit "D" and incorporated herein by this reference.

Sierra Pacific Insurance Company challenged the decision by means of a Petition for Writ of Mandamus in San Francisco Superior Court on November 15, 1996. By joint stipulation, the Department of Insurance and Sierra Pacific agreed to stay enforcement of the rollback Order until resolution of Sierra Pacific's writ. Sierra Pacific obtained an extension of the five-year statute of limitations and the superior court remanded the case, ordering the Commissioner to consider, among other things, previously excluded actuarial testimony of Allen Hall on issues related to Sierra Pacific's Accident-Year 1989 losses and loss adjustment expenses. The court's Statement of Decision was filed on May 30, 2002.

On January 17, 2003, Sierra Pacific filed a motion for Stay and Augmentation of Remand Order in San Francisco Superior Court. The basis for the motion was a \$2,948,230.44 judgment recently entered against Sierra Pacific Insurance Company in litigation with its former managing general agent. The judgment was based on contingent commissions owed by Sierra Pacific for years including 1989 (the rollback year) and, according to Sierra Pacific, the judgment (although on appeal) must be considered in determining how the constitutional variance should be applied to Sierra Pacific and how it affects Sierra Pacific's current financial condition. The superior

court directed the administrative law judge to take the judgment into consideration and make "some accommodation" in considering the issue on remand.

The parties recently agreed to a settlement of Sierra Pacific Insurance Company's rollback obligation, and the Commissioner approved the settlement earlier this month. Consequently, this matter is now resolved.

**THE CONTRACTS MEET THE STANDARDS OF
GOVERNMENT CODE SECTION 19130(b)(3)**

According to the August 15, 2003, letter from Walter Vaughn, Executive Officer of the California State Personnel Board, the Department did not submit any information to show that in 2002, when the contracts were amended, it still did not have adequate staffing resources to provide legal representation in these two cases. Nor did the Department submit any specific information to substantiate that the contracted services are so highly specialized or of such a technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

California Government Code Section 19130(b)(3) provides that personal services contracting shall be permissible when the services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

As set forth above, these contracts meet the standards of section 19130(b)(3).

The rationale set forth in the Board's decision in PSC No. 03-01 should be followed in this case. There, the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") challenged a contract for legal services between the California Department of Food and Agriculture ("CDFA") and a law firm contractor providing legal

services in connection with constitutional challenges to a CDFA program. CASE alleged that the legal services could be performed adequately and competently by civil services attorneys within the Office of the Attorney General ("OAG"). In that case, according to the Board's decision, the contractor provided assistance to the OAG in litigating the complex legal issues underlying the litigation. CASE's challenge was also based, in part, on the OAG's consent letter which indicated that the OAG attorneys who have worked on the case have acquired a great deal of experience and knowledge about these issues. Nevertheless, the Board found that the program "being challenged in the lawsuits is a complex system, about which counsel must have specialized expert knowledge in order to litigate effectively. The contractor has a thorough understanding of the ... industry, ... and the applicable laws and regulations necessary to understand and refute the allegations made by the plaintiffs and to litigate these cases competently. The subject matter of this litigation is so specialized that the cases could not be effectively litigated by an attorney unfamiliar with the complex matters relating to the regulation of milk marketing and the pooling of milk sales revenue."

The Board's decision further noted that "[a]fter years of litigation, these matters are currently pending before the U.S. Supreme Court. If the OAG believes that the Contractor offers expert knowledge, experience, and ability that are 'useful' to the OAG in order for it to effectively and thoroughly prosecute the ongoing, highly technical and complex litigation before the U.S. Supreme Court, the Board, at this late stage in the litigation, will not second guess the OAG's determination. Such an OAG determination is sufficient to show that the Contract is justified under Government Code § 19130(b)(3).

Unlike the CDFA case, in the Century National and Sierra Pacific rollback cases, outside counsel acted as the lead attorneys. In the case of Sierra Pacific, Department staff counsel had

minimal involvement in the actual hearings.³ Department staff counsel had only secondary involvement in the Century National hearings. As reflected in the briefs and decisions in these matters, the rollback cases involve highly technical and complicated actuarial, economic, and constitutional issues. Both cases have been in actual litigation for eight years. Given these facts, the experience necessary to adequately represent the Department in these matters does not currently exist in civil service.

CONCLUSION

For the reasons set forth above, the Executive Officer's decision disapproving the Contracts should be overturned.

Dated: October 22, 2003

Respectfully Submitted,

CALIFORNIA DEPARTMENT OF INSURANCE

By: Elizabeth Mohr
Elizabeth Mohr

³ The Department attorney involved in this matter during the time of the administrative hearing and when the writ was filed has since retired from State Service.

ATTACHMENT 3

STEVEN B. BASSOFF—SBN: 070090
 2000 O Street, Suite 250
 Sacramento, CA 95814
 (916)-448-7317

RECEIVED
 SPB-LEGAL OFFICE

2003 NOV 20 P 2:34

Attorney for CASE

BEFORE THE STATE PERSONNEL BOARD
 OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)	Case No.: PSC 03-09, PSC 03-10
)	
CALIFORNIA DEPARTMENT OF)	CASE'S RESPONSE TO OPENING BRIEF
INSURANCE)	OF DEPARTMENT OF INSURANCE
)	
From the Executive Officer's June 13, 2003,)	
Disapproval of Contracts for Legal Services)	
between the California Department of)	
Insurance and the law firms of Strumwasser)	
and Woocher and Bartko, Zankel, Tarrant &)	
Miller)	

INTRODUCTION

In this proceeding, the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) sought review of two contracts entered into by the California Department of Insurance (DOI) with two private law firms for representation in the Proposition 103 rollback cases. DOI claims that the contracts are justified under Government Code section 19130(b)(3). CASE contends that the contracts are not justified under subdivision (b)(3) and that the Executive Officer's disapproval of the contracts, because DOI did not present sufficient information to justify the contracts under subdivision (b)(3), must be sustained.

On appeal, the DOI has again failed to present sufficient information to justify the contracts under subdivision (b)(3). DOI has not presented any evidence that contracted services were so highly specialized or were of such a technical nature that the necessary expert knowledge, experience, and ability were not available through the civil service system.

**THE CONTRACTS DO NOT MEET THE STANDARD OF
GOVERNMENT CODE SECTION 19130(b)(3)**

The Opening Brief of DOI indicates that Strumwasser and Woocher represented DOI in the Century National Insurance Company rollback matter and Bartko, Zankel, Tarrant & Miller represented DOI in the Sierra Pacific Insurance Company rollback matter. According to DOI these contracts are justified under Government Code section 19130(b)(3), because the services contracted for are so highly specialized or of such a technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

The "evidence" presented by DOI to support the contracts is a two sentence legal conclusion found in its brief on page 5. The brief states that:

"Because seven years had passed since voter approval of Proposition 103, the Commissioner desired quick resolution of the outstanding rollback cases. However, **given the limited resources which could be devoted to prosecuting the complex and technical rollback cases** (which involved complicated actuarial, economic and constitutional issues), the Department sought outside assistance."

Nowhere does DOI explain what it means by "limited resources" or what was so "complex" and "technical" that civil service attorneys could not perform the work. The claim that the cases involved complicated actuarial and economic issues is insufficient to justify the contract. CASE assumes, because DOI does not indicate otherwise, that professional actuaries and/or economists were retained to present evidence on these issues. There is no explanation as to why civil service attorneys could not retain these same experts and present the same evidence. There is no suggestion that the contracted attorneys were themselves actuaries or economists, or that such expertise was required to present the cases. Additionally, DOI does not explain what "constitutional" issues were so difficult that civil service attorneys could not handle those matters. DOI has had ample time to demonstrate what complicated actuarial, economic and constitutional issues were presented that could not be handled by civil service attorneys. It has never done so in this proceeding, and its Opening Brief fails to do so.


This Board has consistently held that lack of manpower (limited resources) is not sufficient basis for contracting out civil service work. Certainly, the DOI had the financial resources to obtain civil service attorneys because it retained two law firms to perform this work at close to \$3,000,000.00.

1 The claim that civil service attorneys could not perform this work is also rebutted by the
 2 fact that in the Century National matter civil service attorneys provided representation during the
 3 administrative remand hearing. Why these attorneys cannot continue such representation is not
 4 explained by DOI when it claims that actuarial, economic and legal issues may arise in the future
 5 that require further contracting out of this work.¹

6 DOI's reliance on the Board's decision in PSC No. 03-01 is misplaced. As noted in that
 7 decision, the California Department of Food and Agriculture submitted sufficient materials to
 8 demonstrate that the Milk Pooling Program that was being challenged was so specialized that the
 9 cases could not be effectively litigated by an attorney unfamiliar with the complex matters
 10 relating to the regulation of milk marketing and the pooling of milk sales revenue. In contrast,
 11 the DOI has not presented any materials showing the nature of the complexity of the actuarial,
 12 economic and constitutional issues presented in the rollback cases, or that those matters could
 13 not be handled by civil service attorneys.

14 DOI has failed to provide sufficient information that the two contracts in question were
 15 justified under section 19130(b)(3). First, DOI's conclusion that the actuarial issues and
 16 economic issues were complex and technical, without even an explanation of what those issues
 17 were, does not make them complex and technical, nor does attaching 100+ pages of briefing
 18 demonstrate that issues were complex or technical such that civil service attorneys could not
 19 handle them. Second, DOI's claim that it contracted out the work because of its "limited staff
 20 resources" is left unexplained. What does that mean? Were there too few attorneys? Did DOI
 21 not have funds to hire additional attorneys? If so, how did it fund the two contracts? DOI has
 22 had since May 27, 2003, to present sufficient information to justify the contracts in question
 23 under subdivision (b)(3). It has failed to do so. Therefore, the decision of the Executive Officer
 24 should be sustained.

25 Date: November 19, 2003



26 Steven B. Bassoff—Attorney for CASE
 27
 28
 29
 30

¹ According to DOI the Sierra Pacific Insurance Company matter has been settled. Therefore, one assumes that DOI will not seek further contracting on that matter.

PROOF OF SERVICE BY MAIL**I, THE UNDERSIGNED, SAY:**

I am, and was at all times herein mentioned, a citizen of the United States and employed in the County of Sacramento, State of California, over the age of eighteen (18) years, and not a party to the within action; that my business address is 2000 O Street, Suite 250, Sacramento, CA 95814

On November 19, 2003, I enclosed a true copy of the attached CASE's Response to Opening Brief of Department of Insurance in a separate envelope for each of the person(s) named below, addressed as set forth immediately below the respective name(s), as follows:

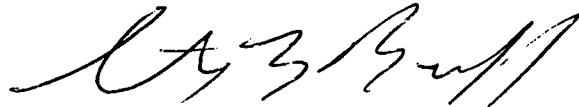
NAME(S) /ADDRESS(ES)

Elizabeth Mohr
Department of Insurance
Legal Division, Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105

Each said envelope was sealed and placed in the US Mail for collection and mailing on the aforesaid date.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

Executed at Sacramento, California November 19, 2003



Steven B. Bassoff

ATTACHMENT 4

California Department of Insurance
 Legal Division, Rate Enforcement Bureau
 Elizabeth Mohr
 45 Fremont Street, 21st Floor
 San Francisco, CA 94105
 (415) 538-4112

Attorneys for the California Department of Insurance

**BEFORE THE STATE PERSONNEL BOARD
 OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

**California Department
 of Insurance**

from the Executive Officer's June 13, 2003,
 Disapproval of Contracts for Legal Services
 between the California Department of Insurance
 and the law firms of Strumwasser and Woocher
 and Bartko, Zankel, Tarrant & Miller.

)
)
) File Nos. PSC 03-09
) PSC 03-10
)

) DEPARTMENT OF INSURANCE
) REPLY TO CASE'S RESPONSE
)
)
)
)
)
)
)

In accordance with the schedule previously set in connection with this matter, the California Department of Insurance ("CDI") submits this reply to the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") Response to the Opening Brief of the Department of Insurance.

CASE's response to CDI's Opening Brief simply repeats arguments CASE originally made. According to CASE, CDI has not demonstrated the complex and technical nature of these cases and why the necessary expertise is not available through the civil service system. Of course, that is precisely the reason why the necessary expertise is not currently available in the civil service system – it is impossible to specify in detail the complex technical and actuarial

arguments made in these cases over the course of the past eight years, and how those arguments relate to the specific factual situations of each individual insurer, without having actually litigated the cases.¹ CASE apparently would have civil service employees spend several weeks attempting to discern all that has transpired in these individual cases over the past eight years, then attempt to represent the Commissioner against experienced opposing counsel, without the benefit of participating in any of the strategy or other working sessions, any of the hearings, or any of the meetings with our own expert witnesses or with opposing counsel.

In fact, when Department counsel sought to provide representation in connection with a limited issue on remand from the superior court, against opposing counsel who had been involved in the case since it began, it quickly became apparent how difficult that task would be.

CASE argues that because CDI was able to pay the costs of outside counsel, it surely had the resources to hire sufficient civil service “manpower” [sic]. However, as CASE certainly understands, hiring civil service attorneys is a lengthy process, while these cases required priority processing. Moreover, the workload was not consistent over time and would not continue indefinitely.

¹ CDI notes that the general issues in these cases involved the ratemaking formula and related matters set forth in CDI’s regulations found at Title 10, California Code of Regulations, Sections 2641.1 through 2646.5, and the manner in which those regulations were interpreted by the California Supreme Court in *20th Century Insurance Company v. Garamendi* (1994) 8 Cal.4th 216. Issues raised by the regulations included various reinsurance arguments, net versus direct ratemaking; accounting conventions, the IRIS tests and Risk Based Capital standards. The *20th Century* decision raised the additional issue of the separate and independent constitutional variance, how that variance should be determined for the insurance industry, whether the test for that variance is the “out-of-pocket” test articulated in *Permian Basin Area Rate Cases* (1968) 390 U.S. 747 and, if so, what that test means in the context of the insurance industry.

CASE's March 28, 2003, letter challenged the extension of these contracts after they had already been in effect, and the contractors had been performing services unchallenged, for several years. CASE never explains its delay.

Additionally, without explanation, and despite the fact that the Attorney General consented to the employment of counsel other than the Attorney General in these matters, CASE alleges that civil service employees in the Department of Justice are able to provide the services provided by outside counsel. The Department of Justice apparently maintains otherwise.

For these reasons, CDI again requests that the Executive Officer's decision disapproving the Contracts be overturned.

Dated: November 25, 2003

Respectfully Submitted,

CALIFORNIA DEPARTMENT OF INSURANCE

By: Elizabeth Mohr
Elizabeth Mohr

PROOF OF SERVICE

Case No. PSC 03-09; PSC 03-10

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On November 26, 2003, I served the following document(s):

DEPARTMENT OF INSURANCE REPLY TO CASE'S RESPONSE

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

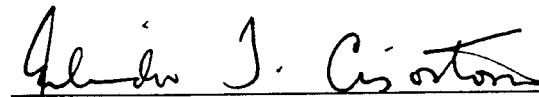
If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Erlinda T. Crisostomo

SERVICE LIST

File Nos. PSC 03-09; PSC 03-10

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
Walter Vaughn Executive Officer California State Personnel Board 801 Capitol Mall Sacramento, CA 95814		U.S. MAIL
Steven B. Bassoff 2000 O Street, Suite 250 Sacramento, CA 95814	Phone: (916) 448 7371	U.S. MAIL

STATE PERSONNEL BOARD

NON-HEARING CALENDAR

RE: BOARD CALENDAR FEBRUARY 10, 2004

(Cal. 2/10/04)

MEMO TO: STATE PERSONNEL BOARD

FROM: KAREN COFFEE, Chief, Merit Employment and Technical
Resources Division

SUBJECT: Non-Hearing Calendar Items for Board Action.

Staff have evaluated these items and recommend the following
action be taken:

PAGE

- A. TRANSPORTATION ENGINEERING TECHNICIAN I AND
TRANSPORTATION ENGINEERING TECHNICIAN II
The California Department of Transportation
proposes to abolish the Transportation
Engineering Technician II classification and
to change the class title of the Transportation
Engineering Technician I classification to
Transportation Engineering Technician.

201

TO: STATE PERSONNEL BOARD

FROM: BOB MEANS, Personnel Management Analyst
Division of Human Resources
Department of Transportation

REVIEWED BY: JUDY O'DAY, Chief
Division of Human Resources
Department of Transportation

SUBJECT: Abolish the class of Transportation Engineering Technician II and re-title the class of Transportation Engineering Technician I.

SUMMARY OF ISSUES:

As the result of a Memorandum of Understanding (MOU) with the California State Employees Association (CSEA), in October, 2002 the Department submitted a proposal to the State Personnel Board (SPB) requesting the establishment of the class of Transportation Engineering Technician II (TET II) and re-titling of the class of Transportation Engineering Technician (TET) to Transportation Engineering Technician I (TET I). The proposal was adopted by the SPB on November 19, 2002.

In May, 2003 the Department of Personnel Administration (DPA) entered into an agreement with CSEA to establish a pay differential for the TET class. The agreement calls for the pay differential to replace the provisions of the MOU establishing the TET II class. In accordance, this proposal abolishes the TET II class and re-titles the class of TET I to TET.

CONSULTED WITH:

Al Ramirez, Department of Personnel Administration
Jennifer Roche, State Personnel Board
Carrie Strong-Thompson, Department of Transportation

CLASSIFICATION CONSIDERATIONS:

The tasks constituting the TET II class were reallocated from the TET class, most specifically those tasks related to conducting inspections and performing materials testing to enforce compliance with plans and specifications on all phases of highway or bridge construction projects. The TET class was revised accordingly and re-titled TET I. Subsequently, DPA and CSEA entered into an agreement to establish a pay differential for the TET class. The agreement provided for abolishment of the TET II class upon establishment of the differential. This proposal will cause the Department to revert back to the use of the TET class as it existed prior to the above actions.

Because a Pay Letter for these actions was never issued by DPA no reclassification of TET personnel took place.

RECOMMENDATIONS:

1. That the class of Transportation Engineering Technician II be abolished.

2. That the title of the class of Transportation Engineering Technician I be changed to Transportation Engineering Technician; and the proposed revised specification for the class as shown in this calendar be adopted.

CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

Schematic Code: GK80
Class Code: 3175
Established: 12/1/56
Revised: 12/4/02
Title Changed: 12/4/02

PRESENT: TRANSPORTATION ENGINEERING TECHNICIAN I
PROPOSED: TRANSPORTATION ENGINEERING TECHNICIAN

DEFINITION

Under supervision, in a first and full journey working level capacity, to do complex nonprofessional highway, bridge, and materials testing-
engineering office or ~~and construction~~ field ~~office~~ work; and to do other related work.

TYPICAL TASKS

Acts as instrument person on highway or bridge location or construction stakeout surveys; sets up, operates, and adjusts all types of precision surveying instruments; keeps survey and construction notes; makes inspections in enforcing compliance with plans and specifications on all phases of highway or bridge construction projects such as earthwork operations, placing of base materials, paving with asphalt or concrete materials, materials control at asphalt or concrete batch plants, culvert construction, piledriving, placing or fabrication of structural steel, and erection of falsework and forms and concrete pours; performs field or laboratory physical tests of highway construction and other materials; assists with research or investigation work on road or bridge materials or methods of construction; calculates traverses or earthwork quantities or prepares them for machine processing; uses engineering and computer-oriented processes to compile data for the design, construction, alteration, maintenance, and operation of a wide variety of transportation engineering projects; analyzes engineering project data; gathers field traffic data; performs traffic operational activities including surveillance and incident response; may assist in the preparation of designs, plans, estimates, reports, and specifications for all types of highway and bridge projects; prepares working plans and detailed drawings; plots boundary lines and calculates land areas; may act as a lead person in construction, materials testing, or in other work; and prepares reports and correspondence.

MINIMUM QUALIFICATIONSEither I

Experience: One year in the California state service performing duties comparable to those of a Junior Engineering Technician, Range B.

Or II

Education: Two years of education equivalent to completion of a curriculum beyond the 12th grade in either (1) engineering which includes courses in trigonometry and algebra or higher, drafting, computer science, and physics, chemistry, or a comparable physical science; or (2) surveying which includes courses in trigonometry and algebra or higher, drafting, surveying, and computer science.

Or III

Experience: Three years of nonprofessional civil engineering experience. (In the California state service, the Junior Engineering Technician meets this qualification.) and

Education: Equivalent to completion of the 12th grade.

KNOWLEDGE AND ABILITIES

Knowledge of: Using and adjusting precision surveying instruments; methods, materials, tools, and equipment used in highway and bridge construction and maintenance work; methods of proportioning and handling portland cement concrete; proportioning and handling bituminous surfacing materials and the handling of asphaltic oils and emulsions; physical characteristics and properties of highway and bridge construction materials and the approved methods and equipment used in making physical tests of construction materials; highway grading, construction, and maintenance; traffic operations, methods, and procedures; ~~construction contract administration field office policies and procedures~~; conventional and state-of-the-art computer applications to transportation engineering work.

Ability to: Communicate effectively at a level required for successful job performance; use and adjust precision surveying instruments; assist in highway and bridge design work; make accurate ~~engineering~~ calculations; inspect construction work and enforce compliance with plans and specifications; analyze situations accurately and take effective action; ~~analyze complex data and prepare associated reports~~.